



**SINGNET PTE LTD**

**SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE**

**IN RESPONSE TO THE**

**MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE  
PUBLIC CONSULTATION**

**REVIEW OF CONSUMER PROTECTION MEASURES IN MMCC**

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**SINGNET PTE LTD**

**SUBMISSION TO THE MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE  
IN RESPONSE TO ITS PUBLIC CONSULTATION ON THE REVIEW OF  
CONSUMER PROTECTION MEASURES IN THE MEDIA MARKET CONDUCT  
CODE ISSUED ON 24 SEPTEMBER 2014**

**1 BACKGROUND**

- 1.1 On 24 September 2014, the Media Development Authority of Singapore (**MDA**) announced a public consultation into proposed revisions to paragraph 3 of the Media Market Conduct Code (**MMCC**). The MMCC sets out obligations that certain Regulated Persons (including broadcasting licensees) must comply with in the provision of media services in Singapore.
- 1.2 The MDA has released a Public Consultation Paper (**Consultation Paper**) and a document containing Proposed Amendments to Part 3 of the MMCC (**Proposed Amendments**). The Proposed Amendments are intended to update and enhance the existing consumer protection provisions in the MMCC. The Proposed Amendments will primarily affect broadcasting licensees offering subscription television services.
- 1.3 SingNet welcomes the opportunity to comment on the Consultation Paper and the Proposed Amendments.
- 1.4 SingNet is a leading Internet service provider (**ISP**) in Singapore and has been at the forefront of Internet innovation since 1994, being the first ISP to launch broadband services in Singapore. It is licensed to offer IPTV services under a nationwide subscription television licence. SingNet offers subscribers in Singapore a subscription IPTV product called mio TV.
- 1.5 SingNet has a direct interest in the Proposed Amendments and has proposed a range of measures in this submission for consideration by the MDA that are intended to enhance the operation of the MMCC.

## 2 EXECUTIVE SUMMARY

### *Key messages*

- 2.1 SingNet is generally supportive of the MDA's objective of delivering greater choice and value to consumers of broadcasting services. As a relatively new entrant into the broadcasting space, SingNet has a keen interest in promoting choice and user convenience.
- 2.2 SingNet is however concerned that the MDA's amendments will raise a number of difficulties for pay TV operators without necessarily delivering any tangible benefit to consumers.
- 2.3 Further flexibility needs to be built into the proposed regulatory structure to ensure that pay TV operators are not inadvertently captured by the Proposed Amendments in circumstances where there is little, if any, consumer detriment flowing from a unilateral variation to an end-user contract.
- 2.4 This is particularly the case in relation to the MDA's proposed extension to the prohibition against imposing early termination charges and the MDA's proposed prohibition against "forced upgrades" of non-pay TV services.
- 2.5 If the MDA decide to proceed with its proposals, SingNet submits that the proposals should only apply on a prospective basis to new customers, with existing consumer contracts being 'grandfathered'.

### *Option to exit without early termination charges (proposed clause 3.5A)*

- 2.6 SingNet has significant concerns with the MDA's proposal regarding an exit option without early termination charges. SingNet considers that the MDA's proposal:
  - (a) overstates the underlying problem it is seeking to address;
  - (b) is likely to be too rigid and absolute in its operation;
  - (c) fails to take account of the manner in which content is licensed by rights holders and subsequently packaged and delivered to consumers by pay TV operators, including the fact that pay TV operators usually have limited

control over the content that is licensed within each channel, with those decisions primarily being made by rights holders on a region-by-region basis;

- (d) lacks a proper or well-constructed materiality threshold, meaning that even trivial or non-substantial changes in the nature of programming could potentially create a right for a consumer to terminate a contract without the application of an early termination charge;
- (e) applies a ‘made in Singapore’ solution to an international problem rather than following international precedents.

- 2.7 SingNet considers that the prohibition against early termination charges should only be available to consumers where the unilateral change results in a “material adverse impact” on the consumer. Unilateral changes that do not have such an impact should not give rise to a right for a consumer to exit a contract without paying an early termination charge, which under clause 3.5 of the existing MMCC must not be excessive in any event.
- 2.8 As the MDA’s proposed approach lacks a specific materiality threshold, it means that even trivial or non-substantial changes in the nature of programming could potentially create a right for a consumer to terminate a contract.
- 2.9 SingNet considers that the existence of a right for a consumer to terminate a contract where there is a removal of a channel or the removal of “material content” within a channel under proposed clause 3.5(a) of the MMCC is unlikely to be workable in practice. The options proposed by the MDA to mitigate against the detrimental effect of unilateral contract changes, such as price reductions, are also unlikely to be workable.
- 2.10 For example, in some circumstances, it may not be possible to source content that may be regarded as a “suitable substitute”. This is particularly likely to be the case for high profile sporting events and high quality, high demand programming. In other cases, while it may be arguable that one program would be substitutable for another (as no two pieces of programming are the same), minds may differ as to whether a particular channel or content can be suitably substituted for one another. For example, if a pay TV operator withdrew “*House of Cards*” from its programming, it would be highly debatable as to whether alternative US political programs, such as “*Madam Secretary*”, would constitute a “suitable substitute”.

- 2.11 The MDA's proposed approach is not currently aligned with international best practice and needs to be simplified. The MDA should consider:
- (a) a simplified test that can be applied by pay TV operators when making unilateral changes that may have an adverse impact on consumers; and
  - (b) a series of non-binding and non-definitive examples of contractual terms that may potentially be unfair which can guide the application of the proposed test.
- 2.12 SingNet also warns that the MDA proposals may result in a situation where some content providers would take the opportunity to extract higher prices from the pay TV operators on grounds that the pay TV operators feel obliged to continue obtaining the same content (regardless whether the content was compelling or even popular) due to pressure from the MDA/consumers. This would eventually translate into higher retail prices for consumers.
- 2.13 SingNet supports the MDA's proposed 30-day window for consumers to exercise their exit rights under a contract and its proposal to allow an early termination charge in relation to the supply of non-essential pay TV equipment.

*Forced upgrades of non-pay TV services (proposed clause 3.2B)*

- 2.14 SingNet has significant concerns in relation to the MDA's proposed prohibition against the "forced upgrading" of non-pay TV services (e.g. telephony and broadband services) as a condition to purchasing or upgrading a pay TV service.
- 2.15 This proposal has a range of issues:
- (a) first, the MDA's jurisdiction does not extend to the provision of telecommunications services, including where these services are sold as part of a bundle with pay TV services – the MDA's proposal is not legally valid to the extent that it affects the manner in which a licensee contracts with a consumer for telecommunications services;
  - (b) second, such a prohibition fails to take account of the fact that bundles usually provide consumers with a range of benefits, such as lower overall pricing and greater convenience – in return for these benefits, it is not uncommon for a supplier to make that supply conditional on the consumer

taking a particular package. These conditions are typically consumer welfare enhancing on the whole;

- (c) third, an absolute prohibition fails to take account of the fact that commercial offers for telephony and broadband services do not remain static – they are constantly evolving in line with changes in market conditions, competition and consumer preferences. In some cases, a particular technology or offer may be discontinued or be de-emphasised in the licensee’s marketing efforts as a way of encouraging consumers to take up newer and better quality services (e.g. fibre broadband over DSL); and
- (d) fourth, even during the minimum service period, licensees may release improved packages for consumers. It would actually cause consumer annoyance and would be damaging to the reputation of the licensee if the licensee did not have the ability to move the customer to the improved package, notwithstanding the fact that consumer may still be subject to a minimum service period.

2.16 Licensees need commercial certainty and flexibility in how they package their bundles and how these are sold to consumers. The MDA’s proposed prohibition is too absolute in nature and fails to take account of the fact that many changes of this nature are likely to be advantageous for the consumer and the licensee alike.

2.17 SingNet has proposed some simplified options for addressing the MDA’s concerns, which permit the making of such changes in circumstances where the “forced upgrade” operates to the benefit of the consumer or does not otherwise have a material adverse impact.

2.18 Such an approach would give licensees the benefit of being able to propose and make changes to bundles offered to consumers in the minimum service period, while also protecting consumers from changes that cause material detriment.

***Making consumers aware of important terms and conditions of service (proposed clause 3.2A)***

2.19 SingNet generally supports the MDA’s proposal to ensure that consumers are aware of important terms and conditions of service(s). However, we note that the scope of proposed clause 3.2A(a) of the MMCC is too broad.

- 2.20 It is simply not practical for a licensee to provide every type of information identified by the MDA, such as information about channels and “material content”, in marketing materials. Marketing materials are usually succinct forms of communications that are heavily constrained by the underlying delivery medium. The MDA’s proposal raises particular issues for radio, TV and public space advertising.
- 2.21 The better approach would be a simple requirement on pay TV operators to make this information available online, as well as a requirement on each licensee to produce a “critical information summary” in respect of the material terms of the relevant consumer contract. This approach is consistent with overseas approaches, including the approach adopted by SingTel Optus in Australia.
- 2.22 SingNet also considers that the proposed three (3) year retention period for marketing materials is too long and does not reflect any practical benefits. The MDA has not outlined why it feels that it is necessary to retain marketing materials for three (3) years. To minimise the compliance burden on licensees, we propose that the MDA amends the requirement to retain materials, including evidence of prices promoted and offered as well as all other terms and conditions, in order to support any investigation or dispute processes.

*Duty to inform (proposed clause 3.5A)*

- 2.23 Whilst SingNet broadly supports the MDA’s proposal for clause 3.5B of the MMCC that pay TV operators should provide consumers with thirty (30) days’ advance notice of when it intends to stop providing any channel or any “material content” of a channel, as well as thirty (30) days’ advance notice of price increases, SingNet does not consider that this requirement needs to be implemented in the form of a hard copy notification to customers. SingNet currently already uses a variety of methods to communicate and inform customers including crawlers across the channel, written emails or written letters, etc. We propose that the requirement allows the pay TV operators to notify their customers in any effective method possible.
- 2.24 Further, SingNet submits that clause 3.5B should also account for “exceptional circumstances beyond the reasonable control of the Regulated Person” that permit the pay TV operator to give less than thirty (30) days’ notice in these very limited situations.

**3 UNILATERAL CONTRACT VARIATIONS**



- 3.1 In its Consultation Paper, the MDA has proposed that the existing prohibition against early termination charges should be expanded to also prohibit a pay TV operator from imposing an early termination charge in response to a unilateral contract variation that results in:
- (a) an increase to the subscription fee;
  - (b) a cessation in the provision of a channel or the removal of “material content” of a channel without replacing the channel or “material content” with a “suitable substitute”, or reducing the subscription fee.
- 3.2 This proposal is intended to expand upon the scope of the current prohibition which prevents early termination charges from being excessive.
- 3.3 SingNet has significant concerns with the MDA’s proposal regarding an exit option without early termination charges.
- 3.4 SingNet considers that the proposed exit option should only be available to consumers where the unilateral change results in a material adverse impact on the consumer. Unilateral changes that do not have such an impact, or which only have a very limited impact on consumer welfare, should not give rise to a right for a consumer to exit a contract without paying an early termination charge.
- 3.5 The MDA’s proposal is cast too widely and creates a significant risk that pay TV operators will be forced to allow consumers to exit contracts following even the most trivial changes to the pricing, packaging or programming of pay TV services. While this is unlikely to be the intention of the MDA’s proposal, it is certainly a significant risk if the proposal is implemented in its current form.
- 3.6 In particular, SingNet submits that the MDA’s proposed approach in clause 3.5A:
- (a) overstates the underlying problem it is seeking to address;
  - (b) is too rigid and absolute in its operation;
  - (c) fails to take account of the manner in which content is licensed to pay TV operators and subsequently packaged and delivered to consumers by pay TV operators; and
  - (d) lacks a proper or well-constructed materiality threshold, meaning that even

trivial or non-substantial changes in the nature of programming could potentially create a right for a consumer to terminate a contract without the application of an early termination charge.

- 3.7 These concerns are most likely to arise in the context of the MDA’s proposal that an early termination charge will not be payable if a unilateral contract variation results in the cessation of a channel or the removal of “material content” within a channel without replacing the channel or “material content” with a “suitable substitute”.
- 3.8 First, the MDA has overstated the nature of the problem that it is seeking to address through this aspect of the Proposed Amendments. In particular, the MDA has focussed its analysis on the removal of certain channels or content but has failed to ignore the fact that licensees, such as SingNet, have also added significant amounts of content in recent years without any increase to subscription fees.
- 3.9 For example, in the case of SingNet, the following channels and content have been introduced over recent years at no additional charges to consumers:

Channel Name	Placed into	Date
RTL CBS Entertainment On Demand	Family+	June 2014
RTL CBS Extreme On Demand	Metro Pack	June 2014
Zee TV	Desi+	June 2014
News 18 India	Kondattam+ & Desi+	April 2014
AniPlus HD	Family+ & Jingxuan+	March 2014
AniPlus On Demand	Family+ & Jingxuan+	March 2014
RTL CBS Extreme HD	Metro Pack	March 2014
ONE HD On Demand	Jingxuan+	March 2014
Astro Vellithirai	Kondattam+	January 2014
TTV World	Jingxuan+	November 2013
cHK (HD)	Jingxuan+	October 2013
cHK On Demand	Jingxuan+	October 2013
RTL CBS Entertainment HD	Family+	October 2013
Fight Sports	World Sports Pack	August 2013
CTI Asia	Jingxuan+	June 2013
CCTV -9 Documentary	Family+	April 2013
Li (Catch Up)	Family+	April 2013
Nickelodeon HD	Family+	March 2013
Nick Jr	Family+	March 2013

MTV Asia	Family+	March 2013
Discovery Kids	Family+	October 2012
Trace Sports HD	Family+	October 2012
Celestial Classic Movies On Demand	Jingxuan Pack	April 2012
Celestial Classic Movies	Jingxuan Pack	March 2012
ONE HD	Jingxuan Pack	November 2011

3.10 It is unclear as to whether the MDA has considered these positive developments in its identification of the extent of the problem it is seeking to now resolve. In any event, the MDA appears to have overstated the extent of the problem. It is not appropriate for the MDA to assert that consumers are suffering detriment from the actions of pay TV operators in circumstances where it fails to also examine positive developments that operate to offset some or all of the perceived consumer detriment.

3.11 Second, the MDA’s proposal does not accurately reflect how pay TV operators acquire rights to content and how this content is distributed to consumers. The MDA proposal supposes that the pay TV operators appear to have a choice (i.e. to continue to provide the same content, failing which they then implement the MDA proposal). This is not always the case. For example:

- (a) over 90% of the channels offered by SingNet on mio TV are sold in an aggregated form to SingNet, which in turn drives how that content is packaged and distributed by SingNet. Only 3 channels – Jia Le Channel, mio Stadium and mio Sports – are aggregated by SingNet. However, for these self-aggregated channels, the bulk of the rights to the content remains owned by third parties and SingNet’s continued rights to that content remain subject to SingNet being able to retain or re-acquire those content rights;
- (b) as content is typically sold to pay TV operators on an aggregated basis, it is not the broadcaster that removes content within a channel or the channel itself. The reasons why content may be removed are numerous:
  - the production house or the content owner (e.g. Fox Studios) may choose not to produce continuing seasons of the drama series or to pull it off air (e.g. even if “*The Walking Dead*” is very popular, if the studio or channel provider chooses not to offer it anymore);

- the channel partner/distributor may no longer want to acquire the program (e.g. due to poor levels of take up, or price changes, etc);
- the demand for particular content in Asia may decrease (though it may have remained the same or increased in Singapore), as content providers assess demand regionally;
- the channel partner/distributor has moved the program to other channels under their suite of channels (e.g. *“The Walking Dead”* Season 1 to 4 was aired on FOX Movies Premium but Season 5 is now on FOX HD). It may not necessarily be the case that a pay TV operator will have rights to the subsequent channel to which a program is transferred, or that the subsequent channel will be available to the consumer in the package that is being acquired by that consumer;
- in other cases, the channel provider chooses to cancel channels if those channels do not generate sufficient returns;
- pay TV operators are required to remove content / channels where the rights to broadcast should content / channels have expired and have not been renewed.

3.12 In fact, SingNet is cognisant that it is an MDA requirement that in the provision of the mio TV service:

- (a) there is no infringement of copyright or any other form of intellectual property rights in any programme transmitted by SingNet; and
- (b) SingNet must first procure all necessary consents or licences from the intellectual property right owners.

3.13 As the above demonstrates, the circumstances surrounding the removal of a channel or individual programs are not necessarily straightforward and it will not always be the case that the pay TV operator is able to source “suitable substitute” content or continue to provide that same content when the rights are not available anymore.

3.14 Third, even in cases where a pay TV operator is able to source an alternative channel or “material content”, there is likely to be significant room for debate as to whether the substitute channel or “material content” is a “suitable substitute”.

- 3.15 In fact, it may not be possible to source for “suitable substitute” content, for example, in the case of high profile sporting events. In other cases, while it may be arguable that one program would be substitutable for another, minds may still differ as to whether a particular channel or content can be suitably substituted for one another. For example, if a pay TV operator withdrew “*House of Cards*” from its programming, it would be debatable as to whether alternative US political programs, such as “*Madam Secretary*”, would constitute a “suitable substitute”.
- 3.16 However, even if it could be argued that some forms of content are substitutable, this does not resolve the issue of whether it would be acceptable for a pay TV operator to simply substitute one comedy program with another comedy program? To what extent would the comedy programs need to be alike, or could older or substantially different programs within the same genre be substituted? If so, in what circumstances? These matters are not trivial and raise significant issues from licensees which have not been addressed by the MDA in its Consultation Paper. In this respect, we would also seek the MDA’s confirmation on its position that channels are substitutable within genres as indicated in the MDA’s decision on exclusive carriage agreements in May 2006.<sup>1</sup>
- 3.17 There is also likely to be significant scope for disagreement as to whether certain content can be categorised as “material content”. The MDA’s proposed criteria in clause 3.7 does not provide any substantive guidance to pay TV operators on this matter. For example:
- (a) the level of interest in content will not always be known through consumer feedback, studies and surveys, as it is not simply practical for pay TV operators to measure levels of interest of every program or channel; and
  - (b) the amount of time allotted to airing the content relative to all other content of the channel is actually irrelevant to whether the content is material – even highly popular content will only be broadcast over a limited time window in an channel and the amount of allocated time will not in nearly all cases provide a meaningful measure of whether content is perceived to be material.
- 3.18 In such cases, the pay TV operator would have to give consumers the ability to exit their contract without paying an early termination charge on the basis that the

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<sup>1</sup> MDA’s decision on exclusive carriage agreements dated 10 May 2006

withdrawal of that program constitutes “material content” and that no “suitable substitute” content exists.

- 3.19 SingNet does not consider that the MDA’s proposed prohibition on early termination charges in cases where there is an increase in subscription fees, a removal of a channel or the removal of “material content” within a channel provides a workable criteria. In particular, SingNet considers that:
- (a) the MDA’s proposal that the removal of a channel or “material content” should give rise to an exit right unless there is a reduction in the subscription fee is unrealistic – subscription packages (and value inherent in such packages to consumers) are not typically linked to a single channel or program (and are not typically sold to pay TV operators by rights holders in this way either) – it would not be possible for a pay TV operator to make a pro-rata reduction in subscription fees based on the total number of channels, the amount of airtime consumed by the relevant channel or “material content”, or any other criteria. In fact, if such an approach was adopted, it might be the case that the reduction in the level of subscription fees might be trivial; and
  - (b) the options that have been proposed by the MDA to mitigate against the detrimental effect of unilateral contract changes in relation to channels and “material content” are unlikely to be workable in practice.
- 3.20 Based on the current proposal, the MDA’s proposal will create significant scope for consumers to exit contracts and avoid early termination charges (which must not be excessive in any event) in cases where the change in question has no adverse impact on consumer welfare or does not result in a substantive change to the overall package of content that is supplied to the consumer.
- 3.21 Furthermore, the MDA proposal provides no commercial certainty for pay-TV operators if such exit options are to be available where no material impact is sustained.
- 3.22 SingNet also warns that the MDA proposals may result in a situation where some content providers would take the opportunity to extract higher prices from the pay TV operators on grounds that the pay TV operators feel obliged to continue obtaining the same content (regardless whether the content was compelling or even popular) due to pressure from the MDA/consumers. This would eventually translate into higher retail

prices for consumers.

- 3.23 In addition to the very significant implications that the MDA's proposals have on pay TV operators, the proposed position is also out of line with international approaches to unfair contract terms and unilateral rights of variation.
- 3.24 Overseas approaches to unfair contracts do not adopt the MDA's proposed level of specificity, but rather adopt a principles-based approach that allows the pay TV operator to determine on a case-by-case basis whether the conduct in question is unfair on consumers. For example:
- (a) In Australia, section 24 of the Australian Consumer Law provides that a term is unfair (and therefore unenforceable) if it would cause a significant imbalance to the parties' rights and obligations under the contract, is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term and would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied upon. The Australian Consumer Law does not grant consumers an automatic and absolute right to terminate their contracts when an unfair term is included. Instead, this one of the possible solutions offered.
  - (b) In Hong Kong, the Communications Association of Hong Kong's Code of Practice for Telecommunications Service Contracts requires that service providers give consumers at least thirty (30) days' notice when a unilateral change will result in an increase in contract service charges or have a 'substantial and adverse impact' on the service enjoyed by a substantial number of customers. SingNet notes that the withdrawal of a piece of content or even a channel from within a pack cannot be regarded as a substantial or adverse impact, particularly where the pay TV operator is not in control of the continued availability of the content or channel.
  - (c) In the United Kingdom, the Unfair Terms in Consumer Contracts Regulation applies the European Commission's Directive. Schedule 2 of the Regulation contains the same non-exhaustive list as Annex 1 of the Directive. Accompanying case law from the UK emphasises the fact that unilateral variations are not automatically prohibited due to unfairness. For instance, in the case of *Governors of the Peabody Trust v Reeve*, the court confirmed that

not all terms listed in the UK equivalent of Schedule 2 will be considered unfair<sup>2</sup>, and that terms are not to be regarded as typically unfair by reason of their inclusion in Schedule 2.

- 3.25 SingNet notes that none of the jurisdictions mentioned above apply unilateral contract variation regulations to the pay TV industry alone. Instead, the prohibition on unilateral contract variations and obligation to provide early exit options are imposed more generally on all industries that meet the legislative/regulatory criteria. This has two results. Firstly, pay TV operators are not unfairly singled out for additional regulation. Secondly, the criteria adopted to encompass all types of change across industries are principles-based and closer aligned with the material adverse impact test that SingNet is proposing.
- 3.26 In line with these international approaches, SingNet does not consider that the MDA's proposed approach is currently aligned with international best practice and needs to be simplified to comprise:
- (a) a simplified test that can be applied by pay TV operators when making unilateral changes that may have an adverse impact on consumers; and
  - (b) a series of non-binding and non-definitive examples of contractual terms that may potentially be unfair which can guide the application of the proposed test.
- 3.27 To this end, SingNet submits that if the MDA is to proceed with its proposal, it should replace proposed clause 3.5A(a) with a simplified 'material adverse impact' test or a "substantial and adverse impact" test, which only permits a consumer to terminate a contract without any early termination charges in cases where the unilateral variation meets this threshold. Under this approach, the issue of whether there is a material adverse impact to a consumer would be determined objectively on a case-by-case basis having regard to the individual circumstances of the unilateral change, rather than according to a set of rules that are effectively 'hardwired' into the MMCC.
- 3.28 The application of such a test would ensure that a contract is only terminable where the unilateral contract variation has had a negative impact on consumers that is not insignificant. SingNet's proposal is closest to the international precedents from Hong

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<sup>2</sup>*Governors of the Peabody Trust v Reeve* [2008] EWHC 1432 (Ch)



Kong and Australia. So, if a consumer suffers little or no detriment (or gains a benefit) as a result of a change, the pay TV operator is free to implement that change.

- 3.29 SingNet supports the MDA's efforts to safeguard against possible gaming, including its proposed thirty (30) day window for consumers to exercise their exit rights under a contract and its proposal to allow an early termination charge in relation to the supply of non-essential pay TV equipment.

#### **4 DUTY TO NOTIFY OF CERTAIN EVENTS**

- 4.1 SingNet generally supports the MDA's proposal for clause 3.5B of the MMCC that pay TV operators should provide consumers with thirty (30) days' advance notice of when it intends to stop providing any channel or any material content of a channel, as well as thirty (30) days' advance notice of price increases.
- 4.2 Such a requirement is reasonable for consumers and is likely to be achievable by pay TV operators in nearly all situations. However, there might be some rare instances (e.g. where negotiations with rights holders go down to the wire and where it is unclear whether a channel or "material content" will actually need to be withdrawn before the expiry of the existing rights) where it is not reasonably possible to provide thirty (30) days' advance notice. In such a situation, it would not be possible to comply with the MDA's proposed requirement unless the pay TV operator provided notice that the relevant channel or "material content" is to be withdrawn and then withdrew that notice where it was consequently able to secure a continuation of those rights.
- 4.3 As negotiations with rights holders are typically confidential and the process of notifying and then potentially withdrawing a notice is likely to cause confusion amongst consumers, SingNet submits that clause 3.5B should also include some additional drafting to account for "exceptional circumstances beyond the reasonable control of the Regulated Person" that permit the pay TV operator to give less notice in these very limited situations.
- 4.4 Finally, SingNet wishes to clarify that it is impractical and costly for pay TV operators to implement a disclosure obligation of this nature by giving customers written notice with hard copies. SingNet's intention would be to give the notice through other means, such as email communications, notification on our website and crawlers across the screen in respect of the channel that is to be withdrawn (or have

“material content” removed).

- 4.5 SingNet wishes that the MDA clarify that for the purpose of complying with proposed clause 3.5B of the MMCC, the requirement allows the pay TV operators to notify their customers in any effective method possible.

## **5 FORCED UPGRADES OF PAY TV SERVICES**

- 5.1 SingNet has significant concerns in relation to the MDA’s proposed prohibition against the “forced upgrading” of non-pay TV services (e.g. telephony and broadband services) as a condition to purchasing or upgrading a pay TV service.
- 5.2 The MDA’s proposed approach, which involves prohibiting the identified conduct outright, is blunt and is likely to have the inadvertent effect of actually preventing consumers from obtaining the benefit of better pricing and better quality packages in some instances. Such an approach is also likely to be unworkable in circumstances where the consumer needs to acquire a particular telecommunication service in order to acquire the pay TV service in the first place.
- 5.3 The MDA’s proposal suffers from a range of issues.
- 5.4 First, the MDA’s jurisdiction does not extend to the provision of telecommunications services, including where these services are sold as part of a bundle with pay TV services. It has no legal power to operate to prohibit a licensee from requesting that a consumer take a particular telecommunications service as a condition of acquiring the pay TV service.
- 5.5 Second, the MDA’s proposed prohibition appears to be so broad that it would actually prevent a licensee from offering the pay TV services that the consumer wishes to acquire as part of a bundle in cases where the pay TV service is dependent on the acquisition of a telecommunications service. For example, as SingNet’s service is delivered over a fixed-line connection, a consumer that wishes to acquire a pay TV service from SingNet for the first time may often also acquire a fixed-line service along with the pay TV service; this is a technical construct and without the fixed line service, the pay TV service will not work.
- 5.6 Third, the MDA’s proposal operates to undermine the benefits that are usually made available to consumers as a consequence of bundling, such as lower overall pricing

and greater convenience – in return for these benefits, it is not uncommon for a supplier to make that supply conditional on the consumer taking a particular package, such as one that includes a higher speed/higher value broadband service. These conditions are typically consumer welfare enhancing on the whole.

- 5.7 Licensees need to have a degree of flexibility in how they package their bundles and how these are sold to consumers. The MDA’s proposed prohibition is too absolute in nature and fails to take account of the fact that many changes of this nature are likely to be advantageous for the consumer and the licensee alike.
- 5.8 The MDA’s proposal also fails to take account of the fact that commercial offers for telephony and broadband services do not remain static. New offers are introduced periodically while others are withdrawn. They are constantly evolving in line with changes in market conditions and consumer preferences. In some cases, a particular technology or offer may be discontinued or be de-emphasised in the licensee’s marketing efforts as a way of encouraging consumers to take up newer and better quality services (e.g. fibre broadband over DSL).
- 5.9 Even during the minimum service period, licensees may release improved packages for consumers. It would actually cause consumer annoyance and would be damaging to the reputation of the licensee if the licensee did not have the ability to move the customer to the improved package in cases where they looked to expand their package to include pay TV services, notwithstanding the fact that consumer may still be subject to a minimum service period.
- 5.10 Last, the MDA seems to have omitted mention of the fact that licensees commonly provide improved telecommunication packages to customers without actually varying the charges. For example, over the last two (2) years, SingNet has upgraded the telecommunication package for customers without necessarily charging them more. These same upgrades have also benefited mio TV customers who took the bundled packages from SingNet

Initial Speed Plan	With Speed Boost (with no additional charges)
Fibre Entertainment Bundle 50 Mbps	Fibre Entertainment Bundle 200 Mbps
Fibre Entertainment Bundle 100 Mbps	Fibre Entertainment Bundle 300 Mbps

- 5.11 In light of the above, SingNet submits that the MDA needs to re-consider the proposed introduction of clause 3.2B. To the extent that the MDA wishes to proceed with changes to the MMCC, then these changes should provide for the following where there is bundling of pay TV services with non-pay TV services, such as fixed broadband and telephony services, the option must be given to the customer to have the option of purchasing an unbundled offer (where the consumer can purchase pay TV services as a standalone product and the consumer has the option but not the obligation to acquire non-pay TV services), bearing in mind that there are still technical limitations as mentioned in the preceding sections.
- 5.12 Alternatively, if the MDA is to proceed with its proposal, it should subject any “forced upgrading” to the material adverse impact test proposed by SingNet above, rather than an absolute prohibition as has been proposed under clause 3.2B.
- 5.13 Such an approach would give licensees the benefit of being able to propose and make changes to bundles offered to consumers in the minimum service period, while also protecting consumers from changes that cause material detriment. In such an instance, the consumer would have the ability to exit a contract during the minimum service period without having to pay any early termination charge but not in cases where the “forced upgrade” operates to the benefit of the consumer, or does not otherwise have a material adverse impact.

## **6 LACK OF AWARENESS OF IMPORTANT TERMS AND CONDITIONS OF SERVICE**

- 6.1 The MDA has explained in the Consultation Paper that it is seeking to ensure that consumers are aware of the terms and conditions of pay TV contracts before they enter them. To this end, the MDA has proposed the inclusion of clause 3.2A of the MMCC, which requires pay TV operators to include additional contractual information in marketing materials, such as the applicable subscription fee and the terms and conditions of the pay TV services (including the channels and material content). The MDA is also requiring pay TV operators to maintain records of marketing materials for a period of three (3) years.

- 6.2 SingNet considers that the proposed scope of clause 3.2A(a) is too broad and unrealistic. It is simply not practical to provide every particular type of information identified by the MDA in proposed clause 3.2A(a) to be included in marketing materials. Marketing materials are usually succinct forms of communications that are heavily constrained by the underlying delivery medium. For example, it is unclear how SingNet would be able to meaningfully provide a list of all channels and “material content” in television or radio spots without cross-referring to information on its website. Similarly, the effectiveness of the marketing material made available by SingNet online, in store and in public spaces is likely to be significantly undermined if the MDA’s proposal needs to be applied literally.
- 6.3 SingNet submits that the better approach would be a simple requirement on pay TV operators to make this information available online, as well as a requirement on each pay TV operator to produce a “critical information summary” in respect of material terms of the relevant consumer contract. SingNet notes that a similar approach is currently adopted under the Telecommunications Consumer Protection Code in Australia, which is implemented by operators through a two page summary of key contractual terms. This approach will ensure that consumers have each access to key contractual information without undermining the effectiveness of a pay TV operator’s marketing efforts.
- 6.4 Finally, SingNet submits that the proposed three (3) year retention period in paragraph 3.2A(d) is too long. Paragraph 10.6.3 of the existing MMCC requires that customers file a request for enforcement within two (2) years of the date of the alleged contravention. There is no need to retain material for a longer period of time, as a customer would be barred from bringing an action in relation to it. Such an approach would also align with the typical minimum service period of pay TV contracts (e.g. 2 years). It is unnecessary to require pay TV operators to retain the documents for longer.
- 6.5 In order to minimise the compliance burden on pay TV operators, we propose that the MDA amends the requirement to retain materials, including evidence of prices promoted and offered as well as all other terms and conditions, in order to support any investigation or dispute processes.

## 7 CONCLUSION

- 7.1 SingNet welcomes the opportunity to provide its views on the Consultation Paper and the MDA's proposed changes to the MMCC.
- 7.2 SingNet submits that further refinement of the proposed changes to the MMCC are needed to ensure that the proposed changes are workable and are not unduly burdensome on the pay TV industry.
- 7.3 SingNet submits that its proposed changes to the MDA's proposals provide a way of achieving these objectives while also ensuring that the interests of consumers are maintained and enhanced. These suggestions have been crafted with workability in mind.
- 7.4 SingNet would be happy to assist the MDA with any further inquiries in relation to this submission.